Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

LOUIS J. DE MAIO,

Petitioner,

v.

ANITA BROWN

AND

THE NATIONAL TREASURY EMPLOYEES UNION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE MARYLAND COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

LOUIS J. DE MAIO, ESQ.,
Pro Se,
P.O. Box 347,
Bel Air, MD 21014,
(410) 879-0952.

THE DAILY RECORD COMPANY, 11 EAST SARATOGA STREET, BALTIMORE, MD 21202

20pp

QUESTIONS PRESENTED

1.) Whether it is a denial of due process under the 14th amendment of the U.S. Constitution to deny, a federal employee, a Maryland resident the right to file a complaint of defamation in a state court against a Maryland resident and an organization authorized to do business in the state of Maryland ?

2.) Whether the acts of calumny by the Respondents constitutes actual malice within the purview of the Supreme Court case of New York Times v. Sullivan 376 U.S. 254 (1964) ?

NO.

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PETITION FOR WRIT OF CERTIORARI

TABLE OF CONTENTS

QUESTIONS PRESENTED	I
PARTIES TO THE PROCEEDINGS BELOW	II
TABLE OF CONTENTS	III
TABLE OF CASES	IV
JURISDICTION	IV
STATEMENT OF THE CASE	1-7
CONCLUSION	7

APPENDIX

APX. 1 Respondent's motion for summary judgment	1-3
APX. 2 Decision of James T. Smith,Jr. Judge,Circuit Court for Baltimore County	4-6
APX. 3 Denial of Writ of Certiorari by Maryland Court of Appeals	7

TABLE OF CASES

New York Times v. Sullivan 376 U.S. 254

Batson V. Shiflett 325 Md. 684 (1992)

JURISDICTION

The Maryland Court of Special Appeals No. 1871, September Term, 1992, unreported,dismiss the Petitoner's complaint on jurisdictional grounds that a complain of defamation by a federal employee could not be filed in a state court.

The Maryland Court of Appeals, Petition Docket No. 337, September Term, 1993 denied the writ of certiorari on October 28,1993 based on no showing that review is desirable and in the public interest.

STATEMENT OF THE CASE

The Petitioner initially filed suit against Anita Brown based on calumny, the act of making malicious false statements under oath calculated to injure the Petitioner's reputation and good name.

The National Treasury Employees Union entered their appearance on behalf of Anita Brown. A dispute arose as to whether a federal union could engage in the practice of law in state courts. The Circuit Court of Baltimore County ruled that the National Treasury Employees Union could engage in the practice of law and is authorized to do business in the state of Maryland.

On July 31, 1991 the court dismissed the Petitioner's suit with leave to amend within 20 days.

On August 12, 1991 Anita Brown was promoted into management and was no longer a member of the bargaining unit.

On August 19,1991 the Petitioner filed an amended declaration based on calumny against Anita Brown and the National Treasury Employees Union.

The Respondents made a motion to dismiss, sanctions and a request for attorney fees.

On October 29 ,1991 in a hearing before the Honorable J. William Hinkle, orally dismissed all the Respondent's motions and ruled that the amended declaration was a valid cause of defamation. The Respondent's motion for reconsideration was denied.

The National Treasury Employees Union filed an answer to the amended declaration and represented Anita Brown

during the entire course of litigation even though Anita Brown was a management official. The National Treasury Employees Union in their answer admitted the statement made under oath was prepared with the assistance of NTEU staff members and was typed in the the NTEU Washington, D.C. field office.

The admission is dispositive that the Respondents did scheme, conspire and prepare, with premeditation and malice aforethought, a false statement with the express purpose of injuring the reputation and good name of the Petitioner.

The Respondents subsequently filed a motion for summary judgment based on the case of New York Times v. Sullivan 376 U.S.254 (1964) See Apx. 1.

The Petitioner filed a cross motion for summary judgment under affidavit with supporting dispositive documentation that the Respondent's statement prepared in the NTEU field office in Washington D.C. were indeed false and untrue. The Petitioner's motion for summary judgment incorporated the facts and circumstances preceding the false statements, the actual use of the false statements on August 29,1990 and the facts and circumstances of the September 13, 1990 meeting in which the Petitioner was exonerated of any wrongdoing, reinstated as a union member and as chapter president.

Robert M. Tobias, NTEU National President, refuses to acknowledge the September 13, 1990 meeting, refuses to retract the false statements or apologize for this wanton,reckless and total

disregard for the truth.

On August 10,1992 in a hearing before the Honorable James T. Smith, Jr., in a written decision, granted the Respondent's motion for summary judgment based on the case of New York Times v. Sullivan and denied the Petitioner's motion for summary judgment. See Apx.2.

On appeal to the Maryland Court of Special Appeals, the court did not rule on either motions for summary judgment or any other questions presented to the court but dismiss the case on jurisdictional grounds.

The appellate court embarked on a mission of its own referencing several federal cases involving federal law, prohibitive personnel practices and adverse and disciplinary actions. From these cases, the court concluded that congressional law precludes the state

courts from having jurisdiction in defamation cases involving federal employees.

If the Maryland Court of Special Appeals had consider state law and in particular Batson v. Shiflett (1992) 325 MD. 684, 602 A(2) 1192, it would have properly concluded that defamation suits are not preempted by federal law.

The case at bar is not predicated on any federal statute and seeks no remedies under federal labor law. "Thou shall not bear false witness against thy neighbor" was in existence long before any federal law was established. This suit is based on calumny, the act of making false and malicious statements under oath with the express intent to injure the reputation and good name of the Petitioner.

When a Maryland resident and an organization authorized to do business in the state of Maryland conspire and scheme to commit calumny, they should be held fully accountable for their transgressions.

The Maryland Court of Appeals denied certiorari since there has been no showing that review is desirable and in the public interest. See Apx. 3.

CONCLUSION

Anyone who willfully and maliciously makes false statements under oath with the express intentions of injury a persons good name and reputation should be held accountable for their actions.

The Maryland state courts are in great need of a criteria of what constitutes "actual malice" in defamation suits.

APPENDIX

Apx.1 Respondent's motion for summary judgment 1-3

Apx.2 Decision of James T.Smith, Jr. Judge, Circuit Court for Baltimore County 4-6

Apx.3 Denial of Writ of certiorari by Maryland Court of Appeals 7

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

LOUIS J. DE MAIO,

Plaintiff,

v. No.91CG1584 93/13

ANITA BROWN

AND

NATIONAL TREASURY EMPLOYEES UNION

Defendants

MOTION FOR SUMMARY JUDGMENT

Defendants Anita Brown and the National Treasury Employees Union, pursuant to Md. Rule 2-501, move for summary judgment on the Amended Declaration filed against them of the grounds that:

1. There is no dispute as to any material fact, and the Defendants are entitled to judgment as a matter of law.

2. Plaintiff cannot meet his burden on summary judgment to show by clear and

convincing evidence that the communications that are the basis for Plaintiff's claim were made with actual malice, as defined by NEW YORK TIMES CO. V. SULLIVAN, 376 U.S. 254 (1964).

3. The communications by Defendants that are the basis for the Plaintiff's claim are true in all material respects.

4. The communications by Defendants that are the basis for the Plaintiff's claim are not defamatory.

In support of this motion, Defendants rely on the attached memorandum of points and authorities.

WHEREFORE, the Defendants, Anita Brown and the National Treasury Employees Union, request this Court to grant their Motion for Summary Judgment and enter judgment in favor of the Defendant, and against the Plaintiff. A proposed Order

is attached hereto.

Respectfully submitted

/s/ Timothy B.Hannapel

Asst. Councel

National Treasury Emplyoees

Union

ATTORNEYS FOR DEFENDANTS

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY,MARYLAND

LOUIS J. DE MAIO

Plaintiff

v. 91 CG 1584

ANITA BROWN,AND

NATIONAL TREASURY EMPLOYEES UNION

Defendants

August 10,1992

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JAMES T. SMITH, JR.JUDGE OF THE CIRCUIT COURT

APPEARANCES: ON BEHALF OF THE PLAINTIFF

LOUIS, J. DEMAIO,ESQUIRE

ON BEHALF OF THE DEFENDANT:

TIMOTHY B HANNAPEL, ESQUIRE

CARY P. SKLAR, ESQUIRE

Reported by Melvyn G. Levin CSR

Official Court Reporter

THE COURT: My only comment with respect to that, sir, is this not the way to, to cure that complaint, quite frankly, This is a defamation suit.

And, and I think it is undisputed with respect the materiality issue that is before this court that the contentions about which you complain are either not the, defamatory, or they are admittedly true, or they are not as a result of anything on the part of the defendant prior to any release.

You may have complaints about the way you were treated, the way your case was handled. But this litigation is not the way to, to, to voice or "have your day in court", so to speak about those complaints.

The New York Times standards have not been met by your response or your motion

for, for summary judgment. And as a result plaintiff's number 30, motion for summary judgment, will be denied. Paper number 28 will be granted.Judgment in favor of defendants for costs. The court will recess.

LOUIS J. DE MAIO

V.

ANITA BROWN et al

In the
Court of Appeals
of Maryland
Petition Docket
No. 337
September,1993
No.1871,Sept.
Term,1992,Court
of Special Appeals

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, in the above entitled case,it is ORDERED, by the Court of Appeals of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ROBERT C. MURPHY
Chief Judge

Date: October 28,1993